

Mr Arne Semsrott
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Our ref: CGO/LPU/CMS-2018-00004-0883

Warsaw, 22 May 2018

Your application for access to Frontex documents

Dear Mr Semsrott,

With reference to your application of 30 April 2018, registered on 30 April 2018, in which you applied for access to

All Frontex working agreements with third countries related to the management of operational cooperation as well as drafts of such working agreements that are not implemented yet. These should include, but are not limited to Cape Verde, Libya, Morocco, Senegal, Mauretania, Egypt, Tunisia and Niger.

On 30 April 2018, you further clarified

I would like to limit my request to all drafts of working agreements with third countries that are not implemented yet.

I regret to inform you that no draft working arrangements currently exist.

In regard to areas where negotiations resulted in rudimentary excerpts, I regret to inform you that access to these nascent documents has to be refused as their disclosure would undermine the protection of international relations as stipulated in Article 4(1)(a) third indent of Regulation (EC) No 1049/2001¹. This is based on the fact that cooperation with third countries is crucial for Frontex and the unilateral disclosure would seriously undermine the mutual trust of all parties, which is essential to the effectiveness of negotiations. As the formulation of negotiating positions involves a number of tactical considerations of all negotiators involved - including the Agency -, Frontex disclosure of the drafts would reveal its own and other parties' negotiating positions, which would, in practice, have a negative effect on the Agency's and other parties' ability to establish a meaningful cooperation or engagement. In this regard, it is not possible to provide further information as to why the documents cannot be disclosed without revealing their contents and without thereby depriving this exception of its very purpose.

A partial release of the excerpts could not be undertaken, as the redacting would be disproportional in relation to the parts that could remain. However, the remaining parts would be meaningless as even the disclosure of the parties in the negotiations would threaten the trust between all stakeholders and the confidentiality of the negotiations.

In addition, the release of the excerpts would seriously undermine the decision making process within Frontex in the sense of Article 4(3) of Regulation (EC) No 1049/2001 as their release would - with ascertainable likelihood - trigger external pressure and third-party influence on the Agency's negotiation positions and initiatives. As no overriding public interest is ascertainable that is objective and general in nature and not indistinguishable from individual or private interests, the release has to be denied.

¹ Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

Yours sincerely,

signed

Hervé Caniard

Head of Transparency Office

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, within 15 working days of the receipt of this letter, you may submit a confirmatory application to Frontex to reconsider its position. Based on Article 8 of Regulation (EC) No 1049/2001, Frontex will reply to you within 15 working days from registration of such application. You can submit your confirmatory application by post or electronically.